

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6726

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SHERRELL GARY BRINKLEY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CR-91-131; CA-02-301-3-2-MU)

Submitted: August 20, 2004

Decided: September 8, 2004

Before WILKINSON, WILLIAMS, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Sherrell Gary Brinkley, Appellant Pro Se. Jennifer Marie Hoefling, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Sherrell Gary Brinkley, a federal prisoner, seeks to appeal the district court's order denying his motion to reconsider the denial of his Fed. R. Civ. P. 60(b) motion, in which Brinkley sought the retroactive benefit of our holding in United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002). We recently held that an order denying Rule 60(b) relief in a habeas setting is "the final order in a habeas corpus proceeding" subject to the certificate of appealability requirement of 28 U.S.C. § 2253(c)(1) (2000). Reid v. Angelone, 369 F.3d 363, 367-70 (4th Cir. 2004).

A certificate of appealability will not issue for claims addressed by a district court absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable or wrong and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Brinkley has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED